

ROUGH DRAFT

30 December 1948

Audit Exceptions Audit + Exceptions

MEMORANDUM

TO: Director, CIA
FROM: Chief, Special Funds Division
SUBJECT: Responsibility of Certifying Officers

Cancelled - never issued

Re: a. Memorandum from the Director, CIA, Subject: "Audit of Special Funds of USG," dated 24 November 1948.

b. Memorandum to the Director, CIA, from General Counsel, Subject: "Audit Exceptions Concerning Per Diem Payments", dated 19 November 1948.

1. The Certifying Officers and the Chief of the Special Funds Division acknowledge receipt of the decision of the Director to effect, reject, or improve per diem payments to Misses [REDACTED]. In the instant cases there is little or no doubt that collection will be made from the principals themselves. In this connection, however, it is respectfully requested that the instructions from the Director "to make recovery ... from the Officer making the payments, if necessary" be clarified at the earliest possible date.

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2. It is noted that the memorandum of the Director is based upon the referenced memorandum from the General Counsel cited above. It is the earnest conviction of the Special Funds Certifying Officers and the Chief, Special Funds, that the principles and concepts set forth in this memorandum are essentially erroneous and false and should not ^{even} be inferred, ~~be~~ applied to the confidential funds of CIA. Further, that the application of these principles would destroy the effectiveness, flexibility, and security inherent in the use of confidential funds.

3. The basis for the above sincere expressions of opinion are as follows:

a. It is believed that the Certifying Officers for the confidential funds of CIA do not, at present, have the same duties and responsibilities as normal Government certifying officers. The duties and responsibilities

of the latter are prescribed by law and are not to be considered in the decisions

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of the Comptroller General. The duties and responsibilities of the Special Funds Certifying Officers are prescribed in the Special Funds Regulations of the Director, CIA, and other orders and memoranda issued by him. Whereas, the ~~Director~~ ^{may} ~~maintained~~ in the proper exercise of ~~the~~ ^{his} administrative prerogatives, charge these Certifying Officers with the identical duties of normal Government Certifying Officers ~~_____~~ he has not done so. ~~This~~ differentiation between the duties and responsibilities of the two types of Certifying Officers is ~~clearly disclosed~~ ^{clearly disclosed} by the following:

1. Part III, Section 3.2 of the Special Funds Regulations defines the duties of the Certifying Officers ~~xxx~~ and the certificates to be executed by them, evidencing the performance of these duties. The Certifying Officer is required to certify that:

- a. He has examined the vouchers or accounts.
- b. That he has been furnished receipt or other supporting data or received an adequate explanation for the failure to supply such evidence.
- c. That it "appears", from such data, that the expenses are necessary, official, and allowable under existing regulations

and are properly chargeable to available appropriations.

The word "appears" implies recognition of operational conditions, which may preclude a more positive certification by the Certifying Officers. In our opinion it requires a Certifying Officer to confirm

b. The policy of the Director as to the rate of reimbursement and the procedures to be followed in connection with certain types of expenditures, such as travel expenses, allowances, and salaries, are clearly stated elsewhere in the Regulations. They in turn govern the Certifying Officer in the accomplishment of his duties. However, it is perfectly clear that the Certifying Officer is not bound by the normal Government criteria but is principally required to assure himself to diligent and reasonable investigation of information available to him of the fact and propriety of expenditures.

c. He accomplishes this by demanding supporting data by interrogation of individuals, by examining relative correspondence and files, and by relying upon information from and approval of other officials. A Certifying Officer, it would seem, is ~~xxx~~ entitled to rely upon statements or information from other officials who by reason of their examination have been seemingly or informally charged with certain responsibilities. Thus, a Certifying Officer must be allowed to rely upon a statement made by a responsible operational officer just as well as he may rely upon a personnel action signed by the person to whom appointive authority has been delegated.

d. Due to the operational requirements of CIA it has been necessary to delegate operational authority to many dozens of field personnel and numerous individuals in the United States. In recognition of this fact the Director has placed the financial responsibility with all such persons in Section 1.4 of the Special Funds Regulations.

e. As additional control and, in our opinion, in recognition of the fact that sound policy requires that financial responsibility and administrative and operational authority should not be divorced, the Director has specifically placed responsibility with Chief's of field installations for the proper handling and use of official funds.

f. Lastly, and as a major element of control, the Director has designated certain individuals as approving officers. Approval by such individuals is required on all accountings and expenditures~~x~~ vouchers. Such approval, as indicated in Section 10.6 of the Special Funds Regulations, "constitutes a certification that the expenditure is:

1. Of a confidential, extraordinary, or emergency nature.
2. Reasonable
3. For necessary official purposes

indicated.

It seems obvious that the specific purpose of placing responsibility with all of the individuals indicated above was to establish financial responsibility along the entire chain of administrative and operational command as a principal mechanic of security and control.

4. The point we wish to clearly establish is that no person can be held pecuniarily liable for an illegal, improper, or ^{incorrect} ~~incorrect~~ expenditure of funds until competent authority has determined which persons or what persons having financial responsibility are to be held accountable for the items in question. Under varying conditions the responsible person could be the recipient, the Chief of the field installation, the approving officer, or the Certifying Officer, or any combination of these.

5. This principle ^{is} ~~is~~ is radically different from that expounded by the General Counsel under which the Certifying Officer is always held to have primary financial responsibility and is required to personally repay improper disbursements. The defined financial responsibility provided for in the Special Funds Regulations is designed to and provide a change of checks and balances in lieu of closely held operation authority, rigid accounting procedure, and audit criteria. Without such disbursement of responsibility the Certifying Officer would have no choice but to demand exhaustive supporting data for every disbursement together with written approval of the Director on every unusual or border-line item of expense.

6. Attention is also called to the fact ~~that~~ ^{the} the opinions of the General Counsel that the Certifying Officer has primary financial responsibility and should be required to make good the amount of any illegal, improper or incorrect payment ~~may~~ ^{may} jeopardize the position of the Director himself. ~~There~~ It appears to be a legal fact that the Director is actually his Certifying Officer for confidential funds. It seems to be true since he certifies as

to the fact and propriety of the dollar expenditures from CIA funds for confidential purposes. Thus, if the Director is, in fact, the Certifying Officer for confidential funds he assumes primary responsibility for erroneous or improper certification even though such is due to error by his subordinates.

7. Attention is also called to the fact that there is no legal basis for holding these Certifying Officers for Special Funds ^{liable} ~~liability~~ for improper payments prior to the establishment of a legal exception to such payments. Specific authority ⁱⁿ in the United States Government are authorized to make exception to disbursement vouchers. The exception taken by the ~~audit~~ Audit Division, I&S, as refused by the General Counsel and approved by the Director, have no legal status outside the organization. Accordingly, although the general audit standards and criteria of the GAO and the Comptroller General may very probably be internally followed and may be required by the Director, CIA, the application of legal recovery procedures to internal exceptions lacking legal status is unsound.